IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

GOVERNMENT APPEAL No. 2010 of 2001
(Old No. 1650 of 1999)

Sate ...Appellant

Versus

Ramesh Raikwar, P.S. Gangnahar,
Roorkee, Hardwar

... Opposite Party

Dated: April 4, 2007

Sri Amit Bhatt, learned Addl. G.A. for the State

HON. DHARAM VEER, J.

This appeal has been preferred against the order-dated 26.02.1999 passed by I Addl. Civil Judge (J.D.) Roorkee, Hardwar, in Case No.203 of 1996, State Vs. Ramesh Raikwar, by which the accused was acquitted from the charge punishable under Section 452, 354 and 506 I.P.C.

2. The prosecution story in brief is that the complainant Smt. Jyoti Srivastava lodged a report with the allegation that on 27.2.1996 a 6:15 p.m., Ramesh Raikwar, peon of National Water Development Authority, Roorkee after seeing the door of the stairs open, reached at the roof of the house and while seeing the complainant along, started harassing her. He also tried to pull the hand of the complainant but the complainant pushed him aside and snatched his face and reprimanded him. It was stated that the husband of the complainant was an employee of Central Government and at that time, he was posted in Tanakpur on official duty. The complainant thereafter got frightened due to the said incident and after that she called the person known to him and

lodged a report in this regard. On the report of the complainant, an inquiry was held and thereafter the charge sheet against the accused person under section 452, 354 and 506 I.P.C. was submitted in the court. The accused denied the said charges and claimed to be tried. The prosecution in support of its case produced P.W. 1 Smt Jyoti Srivastava, the complainant, P.W.2, Rajendra Singh and P.W.3, Shamim Hussain as witnesses to prove the case. The learned I Addl. Civil Judge (J.D.) Roorkee, Hardwar after perusing the material available with it and after examining the charges leveled against the accused, acquitted the accused from the charges punishable under Section 452, 354 and 506 I.P.C. vide his order dated 26.2.1999. Aggrieved by the said order dated 26.02.1999, complainant has come up in appeal before this Court.

3. On 29.10.2005, this Court directed to summon the lower court record of the case. In compliance of the said order dated 29.10.2005, on the basis of the report from In-charge Officer, Record Room, Saharanpur, the I Addl. Civil Judge (J.D.) Roorkee, Hardwar has informed that the record of the case has been weeded out on 22.06.2004. In a judgment rendered by Allahabad High Court in the case of *Aziz Khan Vs. State of U.P. reported in ACC 1992 (29) 223,* it was held as under:-

> ***"Where record has been lost or destroyed and it is not possible to reconstruct the record, it will not be just and proper to direct the retrial of the case if a long gap has elapsed since the commission of the offence."***

4. Even otherwise, after considering all the facts and circumstances of the case and on the basis of judgment and order on record, I do not find any incorrectness, illegality or impropriety in the impugned order passed by learned I Addl. Civil Judge (J.D.), Roorkee, Hardwar. Hence, I am of the considered view that the appeal deserves to be dismissed.

5. Consequently, the appeal is dismissed. No order as to costs.

(Dharam Veer, J.)

Rajeev Dang